IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.23 OF 1983

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Ms. V.P. Shah, advocate for the petitioners.
Respondents served.

CORAM: Y.B. BHATT J.
Date of Decision: 16-01-1996

JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, wherein the petitioners are original plaintiffs-landlords, whereas the opponents are the original defendants-tenants.

2. The plaintiffs-landlords being the owners of the

premises originally leased out to one Dahyabhai Vallabhbhai (since deceased) filed a suit for the recovery of possession and arrears of rent against the tenant on the ground that the tenant was in arrears of rent for more than six months, and was not ready and willing to pay the rent, and further on the ground that the landlords reasonably and bonafide required the suit premises for their personal use and occupation.

3. The defendant-tenant filed his written statement at Exh.12, and on his demise during the pendency of the suit, the legal representatives of the original defendant-tenant filed their written statement at Exh.21. The defendants also raised a dispute as to standard rent and permitted increases, and further disputed other factual averments made in the plaint, including the plaintiffs' assertion as to their reasonable and bonafide requirement. Other contentions were also raised in the written statement pertaining to the reasonableness and bonafides of the landlords in respect of the partition deed executed amongst the plaintiffs, on the basis of which the reasonable and bonafide requirement of the two landlords was changed interse, and the same was incorporated and/or clarified by an amendment made to the plaint.

4. After recording the evidence and hearing the respective parties, the trial court dismissed the suit of the landlords on both the grounds. In this context the trial court observed that the landlords had failed to establish by appropriate evidence on record, that they reasonably and bonafide required the premises for their personal use and occupation. As regards arrears of rent, the trial court held that the case was covered under section 12(3)(b) of the Bombay Rent Act, and since the defendants-tenants had satisfied the requirements of the provision, they are entitled to the protection thereof, and therefore, no decree of eviction can be passed against them.

5. The plaintiffs-landlords therefore preferred an appeal under section 29(1) of the said Act, which came to be dismissed on substantially the same grounds as were relied upon by the trial court. The landlords have, therefore, preferred the present revision.

6. So far as the ground of reasonable and bonafide requirement of the landlords is concerned, I do not propose to enter into a detailed discussion thereof inasmuch as both the trial court as also the lower appellate court have recorded concurrent findings of fact based on the appreciation of evidence on record to the effect that the landlords have failed to establish their reasonable bonafide requirements. When concurrent findings of fact have been recorded by the two courts below, and the same are not shown to be based on such a

misappreciation of evidence as would amount to a perversity in law, I must hold that the same does not call for any interference in the present revision under section 29(2) of the said Act.

7. However, the treatment given by the two courts below to the question of arrears of rent is required to be examined from the correct perspective, and on a correct application of the law applicable to the facts established on the record of the case. When seen from this perspective, it becomes apparent that the lower appellate court has completely misappreciated the pleadings of the parties and has also misapplied the law to the facts already established on record of the case.

8. Firstly the following facts may be noted in respect of which either there is no dispute or where no dispute can be raised.

8.1 By now it is a well settled principle of law that in order to escape from the application of section 12(3)(a) of the Rent Act, the relevant dispute as to standard rent must be raised within 30 days of receipt of the suit notice by the tenant, either by way of a reply to such notice, or by filing an application under section 11(1) of the said Act, and raising a dispute merely by taking a contention in the written statement would not take the case out of the operation of the section 12(3)(a). This position in law is well established once the relevant decisions of the Supreme Court are examined. The relevant decisions in this context are in the cases of (1) Harbanslal (AIR 1976 SC 2005), (2) Shah Dhansukhlal (1968 SC 1109), (3) Ganpat Ladha (19 GLR 1007), (4) Mrunalini (19 GLR 1090) and (5) I.A. Shaikh (35(2) GLR 1591). The lower appellate court, therefore was not conscious of the correct legal principle to be applied to the admitted facts of the case. The lower appellate court clearly failed to appreciate that the defendants-tenants had admittedly not replied to the suit notice at all, neither had they filed any independent application under section 11(1) of the said Act for determination of the standard rent and permitted increase, and had merely raised this dispute by way of a contention in the written statement. In view of the well established principle of law as discussed by the Supreme Court and stated hereinabove, it was not open to the lower appellate court to take the view that raising such a dispute in the written statement would by itself take the case out of section 12(3)(a) of the said Act.

8.2 Even otherwise the lower appellate court ought to have appreciated that the dispute as to standard rent could not legitimately be raised by the tenants inasmuch as the question

of standard and permitted increases had already been decided between the very same parties in respect of the very same premises in at least two earlier proceedings.

8.3 It appears that the tenants had earlier filed Misc. Application No.205/64 under section 11(1) of the said Act where the quantum of standard rent and permitted increases was fixed by the competent court. Thereafter the present landlords had filed an eviction suit against the tenants being Regular Civil Suit No.146/67. In this suit the defendants had once again agitated the question of standard rent and permitted increases. In this suit, the Rent Court, while rejecting the prayer for eviction of the tenants, had passed a decree for arrears and also determined the quantum of standard rent and permitted increases, in consonance with the earlier decision rendered in Misc. Application No.205/64. The decree of the Rent Court in Regular Civil Suit No.146/67 is on record of the present suit at Exh.51. The said decree clearly spells out that the standard rent of the suit premises is Rs.58.10 per month and permitted increases are Rs.6.90 per month. Thus, Exh.51 establishes that the standard rent and permitted increases in respect of the suit premises is quantified at Rs.65 per month (inclusive of taxes).

9. It may be noted at this stage that it is also a well settled principle of law that once a competent court quantifies the standard rent and permitted increases and makes the said quantum payable per month, the net effect thereof is that such quantification cannot then permit the tenant to contend that the taxes are payable annually, and since such taxes form part of the monthly rent, the tenancy cannot be said to be a tenancy by the month, and that therefore the case is taken out of the purview of section 12(3)(a) of the said Act. In the premises aforesaid Exh.51 (the decree in question) establishes two facts; firstly that the standard rent with permitted increases had already been determined between the parties in earlier proceedings at Rs.65/- per month, and that this figure was standard rent and permitted increases inclusive of taxes. Thus, once it is found that the question of standard rent with permitted increases was already concluded between the parties by a decision of the competent court in earlier proceedings, the principle of res judicata would also bar the reagitation of the same question in subsequent proceedings between the same parties.

9.1 In this context it is useful to take note of a decision of the Supreme Court in the case of Raju Kakara Shetty, reported at 1991(1)UJ (SC) page 356. This decision firstly examines the obligation of the owner of the property to pay education cess leviable in respect of the premises, and the right to recover the same from the tenant in addition to

the standard rent in respect of the leased premises. In this context the Supreme Court has observed that the landlord has a statutory right to recover the amount of education cess paid by him in respect of the demised premises from the tenant-occupant. Such amount would squarely fall within the expression "permitted increases" as defined by section 5(7) of the said Act. This statutory right to recover the amount of education cess in respect of the demised premises from the occupant-tenant can be quantified by agreement of parties so long as the amount quantified does not exceed the total amount actually paid by the owner by way of education cess. A statutory right to recover the tax amount by way of reimbursement can be waived or limited by the holder of such right or the recovery can be regulated in the manner mutually arranged or agreed upon by the concerned parties so long as it is not in violation of the statute. If for convenience and to facilitate payment, the parties by mutual consent work out an arrangement for the enforcement of the owner's statutory right to recover the tax amount and for discharging the tenant-occupant's statutory obligation to reimburse the owner, we see no reason for refusing to uphold such a contract and if thereunder the parties have agreed to the tenant-occupant discharging his liability by a fixed monthly payment not exceeding the tax liability, the said monthly payment would constitute "rent" payable by the month within the meaning of section 12(3)(a) of the said Act. The plain implication of the said decision is that if the tax liability has been quantified prorata on a monthly basis and included or clubbed with the amount of contractual rent, the composite figure would still continue to constitute "rent" within the meaning of section 12(3)(a) of the said Act. On the facts of the instant case it is found that the competent court had in earlier proceedings determined the standard rent and permitted increases at Rs.65/- per month, and this included taxes. Thus, on the principle laid down by the Supreme Court in the aforesaid decision, merely because the amount of taxes payable annually has been spread over the rent payable during the year, and the amount of standard rent and permitted increases has been quantified on a monthly basis inclusive of taxes, such quantification would not take the case out of the purview of section 12(3)(a) of the said Act.

9.2 The lower appellate court was, therefore, not justified in entertaining the contention of the tenants that they had raised a dispute as to standard rent which is required to be considered, and that, therefore, that would take the case out of the operation of section 12(3)(a).

10. Even otherwise it is by now a well settled principle that a tenant is entitled to plead the exclusion of section 12(3)(a) only where the dispute as to standard rent which has

been raised is genuine and reasonable, and not a sham and a frivolous plea, which has been raised merely to escape from the operation of section 12(3)(a). This principle has been clearly enunciated by a decision of this court in the case of Taraben Sakarlal Shah, reported at 15 GLR 567.

11. The lower appellate court appears to have adopted a very peculiar approach in the appreciation of the evidence on record, perhaps with a view to justify its adoption of section 12(3)(b) of the Rent Act. The lower appellate court seems to have been swayed by the fact that the landlord had in the suit notice demanded the standard rent and the taxes due and payable by the tenant as separate items. The lower appellate court merely caught hold of this separate quantification of the demand and inferred therefrom that the demand for education cess amounts to a demand in respect of an amount which is not payable by the month, and that therefore, it would be a case not covered under section 12(3)(a). In this context the lower appellate court clearly lost sight of the irrebuttable evidence on record that the standard rent and permitted increases had already been fixed between the parties in earlier proceedings, and had been quantified at Rs.65/ per month (inclusive of taxes). Under these circumstances it was not open to the lower appellate court to interpret the notice of demand by ignoring such earlier determination as evidenced by the decree in question at Exh.51. Furthermore, this view is not sustainable in view of the decision of the Supreme Court in the case of Raju Kakara Shetty (supra).

12. Thus, on the facts of the case it cannot be said that the rent is not payable by the month, and once it is found that the tenant has not raised the dispute regarding the amount of standard rent or permitted increases within the prescribed period of 30 days, and further when it is found that the tenant could not legitimately raise such a dispute at all in view of the earlier fixation of the said amount, the only question which then requires to be examined is whether the tenants were in arrears for a period of six months or more.

12.1 On the question of the extent of arrears, there does not appear to be any controversy whatsoever. The lower appellate court in paragraphs 11 to 14 of its judgement has discussed the relevant facts. The lower appellate court has recorded a finding of fact to the effect that the tenants were in arrears of rent with effect from 1st March 1973, which is also reiterated in the suit notice Exh.36 dated 6th October 1975. In other words, the arrears were of at least 30 months. It is also an undisputed fact that the tenants had neither replied to the suit notice nor had made any payment whatsoever towards this demand of arrears of rent. Thus, clearly section

12(3)(a) of the Rent Act was applicable to the facts of the case, and therefore, the lower appellate court had no jurisdiction but to pass a decree for eviction in favour of the plaintiffs-landlords.

13. In the premises aforesaid the judgement and decree of the lower appellate court, confirming those of the trial court, are clearly illegal and inconsistent with the facts found on the record of the case and are, therefore, required to be quashed and set aside. The same are accordingly quashed and set aside, so far as they pertain to the dismissal of the landlords' suit on the ground of arrears of rent.

14. This revision is, therefore, required to be allowed and accordingly there shall be a decree in favour of the landlords and against the tenants as prayed for in the plaintiffs' suit. The other parts of the decree viz. fixation of standard rent and permitted increases, as also the decree for payment and/or withdrawal of the amount of rent and permitted increases is sustained and is not interfered with. Rule is accordingly made absolute with no order as to costs.

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